APPENDIX

EXHIBIT A

DANN'S OBJECTIONS TO CHRYSLER OF FALSE AND MISLEADING STATEMENTS IN STOCKHOLDERS' NOTICE

Law Offices
DANN, ROSENBAUM, BLOOM & KAUFMAN
1820 David Stott Building
Detroit 26, Michigan
March 20, 1963

Board of Directors
Chrysler Corporation
341 Massachusetts Ave.
Highland Park 3, Michigan

Attention:
Mr. George Love
Chairman of the Board

Re: Stockholders' Notice in Sol A. Dann, et al. vs Chrysler Corp., et al Circuit Court of Chancery of the State of Delaware In and for New Castle County. Civil Action #1330
and
Gallo, et al. vs. Ackerman, et al. #1585.

Gentlemen:

I deeply regret that your "Notice of Hearing on Settlement of Stockholders Suits" and recent press releases necessitate my calling to your attention the statements contained therein which are incorrect and misleading, and which are further misleading by virtue of significant omissions.

Our primary purpose, prior and subsequent to litigation, has been the protection of Chrysler and its stockholders, and in entering into the settlement, we concluded that the benefits to Chrysler and its stockholders, resulting therefrom, would far outweigh any recovery from the individual defendants, particularly considering the change in management and the Company's improved practices.

In keeping with this purpose, we agreed not to pursue the litigation despite and notwithstanding the abundance of information in our files that supports the allegations in our original and amended complaints.

But, we never agreed to permit anyone to make or approve the erroneous statements in your stockholders' notice to the effect that plaintiffs know of no evidence or information to support the charges set forth in the various causes of action. Such statements and the inferences created thereby were repeatedly rejected and repudiated by me, despite exhausting sessions until 4:30 in the morning and other pressures used in previous attempts to accomplish the foregoing.

It was neither necessary—nor appropriate in my judgment to use the stockholders' notice as a last resort, and represent to them that thorough depositions and investigations resulted in the determination by plaintiffs that they had no evidence or information to support the various charges made in the complaint.

As your counsel well knows, we did not fully develop or explore our information nor the evidence available to us, because of the pendency of settlement negotiations and the limitations imposed by your counsel on the scope of the examinations and number of witnesses deposed, etc. Such limited depositions would not be conclusive as to the evi-

dence available or that could be developed from the information in our files. Reference thereto should not have been made the basis of the conclusions you saw fit to draw in the stockholders' notice.

Since you saw fit on the top of page 18 to state such a minor detail as that "the plaintiffs and their attorneys in the Gallo action took no part in the discussions and stipulations regarding the libel suit or its disposition," you should certainly have stated our position and contentions as also set forth in letters to our co-counsel dated February 21, 1962 and February 13, 1963, which were brought to your counsel's attention. These negate any such statements as you attribute to us.

The notice to your stockholders and press releases being solely yours, you are requested to take appropriate action to correct the misrepsentations thereby created and to clearly and correctly state the position and contentions of plaintiffs.

Yours respectfully and sincerely,

Sol A. Dann

Certified mail
Return receipt requested

EXHIBIT B

Re: Dann, et al. v. Chrysler, et al.

Law Offices
DANN, ROSENBAUM, BLOOM & KAUFMAN

February 14, 1964

Chancellor Collins J. Seitz
County Court House
Wilmington, Delaware

Re: Dann, et al. v. Chrysler, et al.
Civil Action No. 1330
and
Gallo, et al. v. Ackerman, Chrysler, et al.
Civil Action No. 1585

Dear Chancellor Seitz:

Enclosed are copies of the documents I referred to and offered in evidence at the hearing that took place before you on Feb. 7, 1964 in the above matter.

I respectfully submit that they support my contentions in Exhibits 1 & 2, and the need for a stay of all proceedings until arrangements can be made, either by the Court acting on its own initiative or by myself, to bring in other counsel to represent and protect not only my interests but those of the other stockholders and the Chrysler Corporation itself.

As I indicated at the above hearing, and as appears from the enclosed documents, especially Exhibits 1 & 2, the "settlement arrangements" and more particularly the pro-

ceedings taken to implement these arrangements are and have been unfair, inadequate and unreasable and contrary to the best interests of the stockholders.

These documents show that the alleged statements and "conclusions" attributed to counsel for plaintiff in the stockholders' notice, relied upon by the Court in its Opinion, and the inferences conveyed therein to the stockholders, are contrary to and inconsistent with the facts, and as set forth in counsel for plaintiff's Petition for Fees and supporting affidavits.

Many vital representations in the stockholders' notice are also inconsistent with the affidavit I filed with this Court on or about March 27, 1963, more particularly paragraph 64 thereof which reads as follows:

> "64. In keeping with this purpose, it was agreed not to pursue the litigation despite and notwithstanding the abundance of information in deponent's files that supports the allegations in the original and amended complaints."

It is necessary to engage other counsel for all the plaintiff stockholders, including myself, because present counsel have not pursued this litigation in a proper, efficient or vigorous manner, to the detriment of the stockholders.

Neither have the "Objectors" and "Intervenors" pursued their objections going to the merits of the causes of action involved, as supported by my files and records, which they had the opportunity to examine but neglected to do so.

In order that the enclosed documents may be more readily identified, there is enclosed a brief summary of the documents referred to, all of which are incorporated herein by reference and marked as exhibits in red ink.

Adequate time is needed in order to engage other counsel, acquaint them with the problems involved, and to prepare for and take all the proceedings necessary to "reopen the record and hearings of this case and to otherwise take all the appropriate action necessary to fully and clearly inform the Court of the * * * facts and circumstances" involved herein, as more particularly requested in Exhibits 1 & 2.

Therefore, I respectfuly submit and request this Court to stay all proceedings for at least 60 days and not to approve any settlement arrangements with the defendants until such time as Your Honor can be fully informed concerning this entire matter, including the information in my files and the documents referred to at the hearing before you.

I further request Your Honor to take all the appropriate disciplinary or investigative actions necessary under the circumstances pointed out to you at the hearing and if this Court finds it necessary, to then refer this entire matter to the authorities having jurisdiction thereof, including the American Bar Assn., local bar associations, and also to the Attorney General's office to determine whether a Grand Jury or other means be employed to determine whether there has been any conspfiracy to deceive the Court or the stockholders.

Respectfully submitted & requested,

(sg.) Sol A. Dann.

cc:
Mr. Aubrey Lank
Amicus Curiae
P. S.

Copies of this letter and petition for the relief therein requested also sent to all counsel of record listed on attached sheet, except exhibits. S. D.

EXHIBIT C

Law Offices
DANN, ROSENBAUM, BLOOM & KAUFMAN
1820 David Stott Building
Detroit, Michigan 48226

Feb. 18, 1964

Chancellor Collins J. Seitz
County Court House
Wilmington, Delaware

In the Court of Chancery of the State of Delaware
In and For New Castle County.

Dann, et al v. Chrysler, et al
Civil Action No. 1330
—and—
Gallo, et al v. Ackerman, Chrysler, et al
Civil Action No. 1585

Petition to Stay Proceedings, Reopen Record, etc.

Dear Chancellor Seitz:

Enclosed are additional memorandum identifying the contents in the remaining 43 exhibits I sent to you and the amicus last Friday, February 14, 1964, to support my request that the Court, inter alia, postpone all proceedings in order to enable the employment of other counsel for the plaintiff stockholders, including myself.

I respectfully submit that this is necessary in order to enable the Court to become fully informed of the matters involved herein, as indicated by said exhibits and the statements I made in open Court on February 7, 1964.

Because of the shortness of time to engage and make proper arrangements with other counsel for such purposes, the matters involved herein being very extensive and complicated, and being unfamiliar with your local procedure, I request the Court to treat my letter of February 14, 1964 and this letter as a petition, and in the interim to formalize my requests that:

1) The Court reconsider any and all orders or opinions heretofore rendered in the above entitled cases in the light of the foregoing exhibits.

2) The record and hearings be reopened.

3) All proceedings be stayed for at least 60 days.

4 That no Order be entered approving any settlement arrangements until this Court has been fully informed of all the facts and circumstances referred to in my letter to you of February 14, 1964 and the exhibits referred to

5) That a Master in Chancery be appointed to hear any and all further testimony that may be submitted in support of any and all matters involved herein. That such Master shall also have the power to take testimony outside of the State of Delaware and wherever reasonable under the circumstances.

6) That the Court grant plaintiff such other and further relief as may be necessary to protect the interests of the stockholders and take such further actions as requested in my letter of February 14, 1964.

This letter petition is being filed with you and a copy thereof is being sent to all counsel of record as listed in said letter of February 14, 1964.

In the event your local rules require any formalities for the filing of this "letter petition" in the above entitled causes and to bring this petition on for hearing before you, I would appreciate your advising me accordingly.

Respectfully requested and submitted,

(sg.) Sol A. Dann
In Pro Per

CC:
Amicus Aubrey B. Lank
and all counsel of record

EXHIBIT D

COURT OF CHANCERY OF THE
STATE OF DELAWARE

Collins J. Seitz
Chancellor

Court House
Wilmington, Delaware

February 18, 1964

Sol A. Dann, Esquire

Re: Dann, et al. v. Chrysler, et al.
Gallo, et al. v. Ackerman, et al.

Dear Mr. Dann:

I acknowledge your letter of February 14, 1964, with enclosures.

Your renewed application to extend the time to reopen the record, etc. is denied for reasons already appearing in the record.

Other matters mentioned by you are not so clear to me that I intend to take any action with respect thereto. You,

of course, are free to pursue whatever avenues are available if your believe there has been a miscarriage of justice either with or without your prior cooperation, tacit or otherwise.

Very truly yours,

Collins J. Seitz
Chancellor

(Copy mailed to all counsel of record.)

EXHIBIT E

LETTER TO CHANCELLOR SEITZ TO REFRAIN FROM ENTERING ANY ORDER THAT WOULD APPROVE A "WHITEWASH SETTLEMENT".

Law Offices
DANN, ROSENBAUM, BLOOM & KAUFMAN

February 21, 1964

Chancellor Collins J. Seitz
County Court House
Wilmington, Delaware

Re: Dann, et al v Chrysler, et al
Gallo, et al v. Ackerman, et al

Dear Chancellor Seitz:

Thank you for your letter of February 18th. I regret that some of the matters I mentioned are not too clear to

you. If given the opportunity I believe these can be clarified.

I respectfully submit that I am only one of several named plaintiffs in this "*class*" suit, instituted by Karl Horvath who signed the Bill of Complaint in behalf of thousands of unnamed stockholders (Karl Horvath was never examined). I submit that no "miscarriage of justice, either with or without (anyone's) prior co-operation, tacit or otherwise" would permit the approval of any arrangement that results in a miscarriage of justice.

These tenative "settlement arrangements" still need your order of approval before they can become final and binding on the stockholders. This Court is still free to pursue whatever avenues are available to prevent any miscarriage of justice such as described in the petition I mailed you on Feb. 18, 1964.

In the final analysis, the approval of any settlement is your sole responsibility.

My efforts throughout were directed toward having your Honor fully informed before you entered any order of approval.

I trust you will appreciate the predicament I have been in as a result of the many "pressures" I referred to on the bottom of page 1 of my letter dated March 20, 1963 which was exhibit 11 of the documents I sent you.

If any statement I made is not taken out of context, I thought you would understand this despite the hair-splitting technical distinctions I was persuaded to make against my better judgment between evidence vs. information.

It was in keeping with my obligations to the Court and the stockholders that I sent you exhibits that clearly indicate that I have always been opposed to any *whitewash settlement*. I also objected to anyone making the Court a party thereto without his knowledge. (See exhibit 31 on page 14 of Petition to Reopen, etc.)

Perhaps I—alone—should have exerted greater efforts to protect the Chrysler stockholders and the Court. If I have made a mistake it is never too late to correct it. I have made many mistakes in my lifetime, but I always found life easier to bear after I confessed and hastened to correct them. If I have failed in this respect I have at least tried—and am still trying—against all odds.

Religion has never meant anything to me unless it could be put into practice.

There is nothing more maddening than to be told you will be punished if you do the right thing. This is a frustration I could not live with. My religion has taught me essentially ethics and a way of life that deals with man's relationship to man as a means of finding relationship with his Creator. Our first obligation as lawyers is to treat the Court and our fellowman justly.

Since you have requested all parties to submit a proposed Order, regardless of objections to the settlement;

Therefore, without waiving any of my objections and specifically reserving all of my rights, as more specifically set forth in my "letter petition" of Feb. 14th and Feb. 18th, 1964, I am submitting for your consideration the attached proposed "Temporary Order", which may help to solve some of the problems involved. I have used the orders already submitted as guide lines. But I sincerely hope

and trust you will still reconsider all that has transpired before entering any order of approval.

Respectfully & sincerely yours,

Sol A. Dann
In Pro Per

cc:
Mr. Aubrey B. Lank
Amicus Curiae
Register of Chancery
And all counsel of record.

EXHIBIT F

LETTER TO AUBREY B. LANK, AMICUS, REQUESTING HIM TO EXAMINE MY FILES AND RECORDS

Feb. 21, 1964

Mr. Aubrey B. Lank
1118 Wilmington Trust Bldg.
Wilmington 1 Delaware

Re: Dann, et al v. Chrysler, et al
Civil Action No. 1330

Dear Mr. Lank:

In reply to your letter of February 18th wherein you state "I do not know why you continue to send these documents to me as I have no responsibility in this matter after the completion of my original report", permit me to remind you that not unlike the attorneys in this case, you,

as amicus curiae, assumed extraordinary fiduciary duties and obligations to the Court and the stockholders.

> "* * * whenever facts are placed before a Court which cause any suspicion of collusion between the parties, no matter in what way or form the facts are brought to the knowledge of the Court, it is the duty of the Judge at once to institute such an examination as will satisfy him of the truth or falsity of the charge". Quoting from Section 6, 2 Am. Jur. 682 under title of Amicus Curiae.

I regret that you did not avail yourself of the opportunity I extended you to examine the many suitcases of documents I produced in Delaware last May. Nevertheless, I am again inviting you to come to Detroit and examine these documents, and to file a supplemental report after you have examined these documents in the light of my recent Petition to Reopen, etc.

Sincerely,

Sol A. Dann

cc:
Hon. Collins J. Seitz
Register in Chancery

EXHIBIT G

TELEGRAM TO CHANCELLOR SEITZ REQUESTING OPPORTUNITY TO FILE EXTENSIVE AMOUNT OF INFORMATION AND POTENTIAL EVIDENCE AND LEADS TO EVIDENCE.

February 27, 1964 12:15 P.M.

Chancellor Collins J. Seitz
County Court House
Wilmington, Delaware

IN ORDER TO AVOID ANY MISUNDERSTANDINGS AND PROTECT CHRYSLER STOCKHOLDERS AND CORRECT PRESENT INCOMPLETE CONDITION OF RECORD AM ATTEMPTING TO DIGEST AND PLACE BEFORE YOU IN BRIEF FORM FOR YOUR HONOR'S CONSIDERATION AND OTHERS EXTENSIVE AMOUNT OF INFORMATION AND POTENTIAL EVIDENCE AND LEADS TO EVIDENCE FROM MY FILES THAT SUPPORTS CONTENTIONS IN MY RECENT PETITION TO REOPEN RECORD, ETC. IN CHRYSLER MATTER. THIS WILL NEGATE AND REFUTE STATEMENTS IN STOCKHOLDERS' NOTICE ETC. IN RE MERITS OF PLAINTIFF'S CAUSES OF ACTION AND UNWARRANTED OR UNAUTHORIZED CONCESSIONS OR CONCLUSIONS IN REFERENCE THERETO; ANY INFERENCES, DEPOSITIONS, TESTIMONY OR STATEMENTS BY ANYONE TO THE CONTRARY NOTWITHSTANDING. BUT THIS WILL TAKE AT LEAST TWO OR THREE WEEKS THEREFORE RESPECTFULLY REQUEST YOU TO WITHHOLD THE ENTERING OF ANY ORDER IN REFERENCE THERETO OR IN RE SAID STOCKHOLDERS' NOTICE OR RE SETTLEMENT ARRANGEMENTS UNTIL SUCH TIME AS I AM ABLE TO FILE SAME WITH YOU SO THAT SAID POTENTIAL EVIDENCE, LEADS TO EVIDENCE OR INFORMATION CAN SPEAK FOR THEMSELVES, OR, IN ALTERNATIVE, RESPECTFULLY REQUEST THAT YOU DIRECT YOUR AMICUS, AUBREY LANK, TO EXAMINE SAID RECORDS AND TAKE MY DEPOSITION IN REFERENCE THERETO IN DETROIT IMMEDIATELY. COPIES HEREOF BEING MAILED TO COUNSEL OF RECORD INCLUDING OBJECTORS AND INTERVENORS.

Sol A. Dann
In Pro Per

EXHIBIT H

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EXCERPTS FROM ORDER ON CERTAIN MATTERS RULED UPON AT HEARINGS ON FEBRUARY 7, FEBRUARY 17, AND FEBRUARY 24, 1964 (NOTING DANN'S OBJECTIONS).

The Court having heard arguments from counsel on February 7, 1964 upon (1) the form and contents of the order to be entered on the Court's opinions of December 31, 1963 and February 7, 1964; (2) the written motions and objections by the objectants Sandler, et al., and the objectant intervenor Koenigsberg, respectively, directed to the defendants' proposed order; and (3) *the plaintiff Dann's oral application to repudiate and reopen the settlement on various grounds, his oral objection to the settlement, his oral application to continue the hearing of February 7, 1964 to allow him time to secure new counsel and for such new counsel to familiarize himself with the litigation;* and the Court having considered the motions for reargument filed by objectants and the intervenor and the answer filed by certain defendants to the said motions for reargument; and the Court having filed a supplemental opinion on February 7, 1964 on the motions for reargument and having made certain oral rulings at the time of the hearing on February 7, 1964 and having filed a memorandum opinion on February 18, 1964, on the form and contents of the order to be en-

tered on the Court's opinions of December 31, 1963 and February 7, 1964; and

* * * * *

The plaintiff, Sol A. Dann, by letter dated February 14, 1964, having renewed his application that the Court stay all proceedings and not approve the settlement, and the Court having replied to said letter by its letter of February 18, 1964; and

The Court having heard argument from counsel on February 24, 1964 upon (1) motion of objector Arthur Hoffman for a stay, to take depositions and for intervention, and (2) oral motion of defendant W. C. Newberg objecting to the terms of the settlement and for a stay *and plaintiff Sol A. Dann having filed on February 19, 1964 his "letter petition" for reconsideration of any and all orders heretofore entered in these cases, reopening the record and hearings herein, a stay of all proceedings for a period of 60 days, and for other relief, and the Court having evonsidered said matters, including all documents submitted by plaintiff Dann in support of his said applications and objection, and his renewal thereof, and his said "letter petition"; and*

* * * * *

It is Ordered as follows:

1. The motions for reargument filed by the objectants-intervenor be and the same hereby are denied.

2. *Based on the entire record of this case, the said applications and objection of the plaintiff Dann, and the renewal thereof, and said "letter petition" by plaintiff Dann be and the same hereby are denied in all respects.*

3. The motions of ojector Hoffman and defendant Newberg are denied in all respects, except that said objector

is hereby granted leave to intervene as a party plaintiff herein for the sole purpose of objecting to the fairness and adequacy of the settlement and said defendant is hereby granted leave to file a letter memorandum in support of his objection to the settlement on or before February 28, 1964 and defendant Chrysler Corporation to reply thereto as soon as possible thereafter, if it so desires.

4. Defendants' objections to interrogatories 12 through 18 of intervenor Koenigsberg are sustained.

* * * * *

6. The Court reserves jurisdiction as to the form of order or orders to be entered on the Court's opinions of December 31, 1963 and February 7, 1964.

(Emphasis supplied.)

/s/ Collins J. Seitz,
Chancellor.

Wilmington, Delaware,
February 28, 1964.

EXHIBIT I

COURT OF CHANCERY OF THE
STATE OF DELAWARE

Collins J. Seitz
Chancellor

Court House
Wilmington, Delaware

February 28, 1964

Michael J. Hand, Esquire

Re: Sol A. Dann, et al. v. Chrysler, et al.
Gallo, et al. v. Ackerman, et al.

Dear Mr. Hand:

I acknowledge your letter of February 26, raising some question about the adequacy of the notice to you of the presentation of the order incorporating my earlier rulings. First of all, the court indicated at the hearing, which you attended, what was to be incorporated in the order and the entry was deferred merely so that Mr. Corroon could cause it to be retyped. Therefore, I do not consider the notice provision applicable to this situation.

As to your objection to the form of order I believe it fairly incorporates my rulings. I find this to be so after checking the transcript of the hearing.

I also received your letter of February 27, and have caused a copy to be delivered to Richard F. Corroon, Esquire, of Berl, Potter & Anderson, Delaware Trust Building, Wilmington 1, Delaware, who is one of the principal counsel for the defendants. If there is any further correspondence, I suggest that you include Mr. Corroon among those to receive it.

I have directed Mr. Corroon to send you a conformed copy of the order entered today and in due course you will be notified of my decision on the matter reserved.

Very truly yours,

Collins J. Seitz,
Chancellor.

EXHIBIT J

In the Court of Chancery of the State of Delaware
in and for New Castle County

MEMORANDUM OPINION *(Unreported)*

(March 4, 1964)

Daniel O. Hastings, Clarence W. Taylor and Russell J. Willard of Hastings, Taylor and Willard of Wilmington; Lewis M. Dabney, Jr. and Herbert Robinson of New York City; and Frank Rosenbaum of Dann, Rosenbaum, Bloom & Kaufman of Detroit, Michigan, for plaintiffs in Civil Action No. 1330, except Dann.

William E. Taylor, Jr. of Wilmington; Norman S. Nemser and Stanley Nemser of Nemser & Nemser of New York City; and Irving Steinman of New York City for plaintiffs in Civil Action No. 1585.

Aaron Finger and Robert H. Richards, Jr. of Richards, Layton & Finger of Wilmington and Milton Pollack of New York City for defendant, Chrysler Corporation in Civil Action No. 1330 and Civil Action No. 1585.

Richard F. Corroon of Berl, Potter & Anderson of Wilmington; David W. Peck and Howard F. Milman of Sullivan & Cromwell of New York City for defendants, Jones, Brady, Dodge, Love McCollum, McElroy, McNeill, Page, Trippe and Warren in Civil Action No. 1330 and defendants, Van Bomel, Coleman, Love, McNeill, Dodge and Estate of W. A. Jones in Civil Action No. 1585.

Daniel L. Herrmann of Herrmann, Bayard, Brill & Russell of Wilmington and Robert Ehrenbard of Kelley, Drye, Newhall, Maginnes & Warren of New York for defendants Ackerman, Bright and Laughna in Civil Action No. 1330 and defendants Ackerman and Bright in Civil Action No. 1585.

S. Samuel Arsht of Morris, Nichols, Arsht & Tunnell of Wilmington and Robert Ehrenbard and Francis S. Bensel of Kelley, Drye, Newhall, Maginnes & Warren of New York City for defendants, Colbert, Jacobson, Leary, Misch, Quinn, Row, Townsend and Woolson in Civil Action No. 1330 and defendants, Colbert, Leary, Misch, Quinn, Townsend, Woolson and Zeder in Civil Action No. 1585.

Clyde M. England, Jr. of Killoran and VanBrunt of Wilmington for defendant, K. T. Keller in Civil Action No. 13330 and Civil Action No. 1585.

John J. Morris, Jr. of Morris, James, Hitchens & Williams of Wilmington for defendant, NAFI Corporation.

Albert W. James and Arthur J. Sullivan of Morris, James, Hitchens & Williams of Wilmington for defendant, Jack W. Minor in Civil Action No. 1330 and Civil Action No. 1585.

Howard M. Handelman of Wilmington and Norman Annenberg of New York City for objector, Erwin H. Ezzes.

Irving Morris and Joseph A. Rosenthal of Cohn & Morris of Wilmington for objectants, Judson, Cassady and Seeman, Executrices, and objectant, Sandler.

Frank J. Miller of Walker, Miller & Wakefield of Wilmington for intervenor, Herman Koenigsberg.

Sotiere S. Kapsalis of Wilmington and I. Walton Bader of Bader and Bader of New York City for intervenor, Arthur Hoffman.

Michael J. Hand of Hand, Kiefer, Allen & Ryan of Detroit, Michigan for defendant, William C. Newberg.

Sol A. Dann, Pro Per.

SEITZ, Chancellor: The defendant, William C. Newberg, objects to the dismissal of the cases without prejudice as to him but with prejudice as to the other defendants. He apparently wants the dismissal also to be with prejudice as to him or the opportunity to litigate the merits of the claims. This is my decision thereon.

I cannot find where the dismissal without prejudice as to Newberg and the dismissal with prejudice as to the other defendants works any legal prejudice to Newberg. *In discharging its function of evaluating the fairness of the settlement, the court did not directly determine the merits of the litigation.* It merely weighed the claims and possible defenses in order to arrive at a determination as to whether the settlement was fair. See Braun v. Fleming-Hall Tobacco Co., 33 Del. Ch. 246, 92 A. 2d 302. Under these circumstances it is difficult to see how the judgment here entered could have either a res judicata or collateral estoppel effect on present or prospective litigation involving Newberg's personal rights or obligations. *To remove any doubt that the court was merely approving the settlement rather than directly decided the merits of the lawsuit, I will strike from Mr. Corroon's proposed interlocu-*

tory and final orders wherever they appear the words "on the merits and". However, except as to Newberg, the complaints will be dismissed with prejudice as to all defendants. (Emphasis supplied.)

A conformed copy of my order denying this aspect of the Newberg application is attached. I am also this day entering the order approving the settlement and directing Mr. Corroon to send Mr. Hand, Mr. Dann, and Mr. Bader a conformed copy thereof.

EXHIBIT K

In the Court of Chancery of the State of Delaware
in and for New Castle County

FINAL DECREE AND JUDGMENT

This 9th day of March, 1964, the Court having entered its Order of *March 4, 1964*, and the affidavit of G. T. Higgins, an officer of Chrysler Corporation, having been submitted to the Court, and the Court finding that the individual defendants Ackerman, Bright, Leary, Love, Misch, Quinn and Townsend have each executed with Chrysler Corporation an agreement in the form annexed to said Order of March 4, 1964 as Exhibit A, it is, for the reasons set forth in the Court's opinions of December 31, 1963 and February 7, 1964, and in accordance with said *Order of March 4, 1964* (Emphasis supplied.)

Ordered, Adjudged and Decreed:

1. The complaints as amended in the above actions are dismissed with prejudice as to the defendants Paul C. Ackerman, James C. Brady, R. S. Bright, Lester L. Colbert, Joseph M. Dodge, C. L. Jacobsen, W. Alton Jones,

John D. Leary, George H. Love, L. F. McCollum, Neil McElroy, R. E. McNeill, Jr., F. W. Misch, Robert G. Page, E. C. Quinn, E. C. Row, Lynn A. Townsend, Juan T. Trippe, Louis B. Warren, L. I. Woolson, K. T. Keller, R. T. Keller, R. P. Laughna, Jack W. Minor, NAFI Corporation (now Chris-Craft Industries, Inc.), John A. Coleman, James T. Farrell and Morgan Guaranty Trust Company, as Executors of the Estate of W. A. Jones, deceased, L. A. Von Bomel and James C. Zeder, and judgment is entered in favor of each such defendant.

2. The complaints as amended in the above actions are dismissed without prejudice as to the defendant William C. Newberg.

3. Plaintiffs and defendants are directed to make effective the settlement and compromise of this action in accordance with the terms and conditions of the Stipulation of Settlement, dated March 5, 1963, and, upon final approval by the Court, as that term is defined in paragraph 4 of said Stipulation, Chrysler Corporation is directed to execute and deliver to each of the individual defendants who is a party to said Stipulation and to all past or present directors of Chrysler, except defendant William C. Newberg, a release in the form annexed to said Stipulation as Exhibit B.

4. Neither this order nor the Order of March 4, 1964 shall be deemed to constitute judicial approval under then existing conditions of any payment made pursuant to the modification of the Chrysler Corporation Incentive Compensation Plan, as approved by the stockholders of Chrysler Corporation on April 16, 1963, or of any award made pursuant to said modification either before, or subsequent to, the date of this order or said Order of *March 4, 1964*.

5. When the agreement in the form annexed to said order of March 4, 1964, as Exhibit A, becomes finally effec-

tive, Chrysler Corporation shall deduct from the Incentive Compensation Fund for 1963 an amount equal to the reduction in incentive compensation for 1963 for the said defendants who have executed said agreement and shall return such amount to earnings.

6. The Court reserves jurisdiction of these actions with respect to all matters relating to the consummation of the settlement and making operative the stockholders' resolution of April 16, 1963, and to applications by plaintiffs, the objectants and the *amicus curiae* for allowances of fees and expenses. No fee applications will be processed or applications for fees by objectors filed until final approval by the Court, as that term is defined in paragraph 4 of the Stipulation of Settlement, dated March 5, 1963. Evidence pertinent to the disposition of fee applications will be determined in connection with those hearings and not at this time.

s/ Collin J. Seitz,
Chancellor.

EXHIBIT L

DECISION OF THE SUPREME COURT OF DELAWARE

WOLCOTT, J.;

These are appeals from a judgment of approval of the settlement of a stockholders' derivative action brought in behalf of Chrysler Corporation. The settlement approved disposed of two stockholders' derivative actions which had been consolidated for the purpose of settlement. In the two actions 17 separate causes of action, involving in all 70 separate claims, were asserted against 97 individual and corporate defendants.

The causes of action may be divided into three classifications: (1) charges that certain officers of Chrysler had personally profited from transactions between Chrysler and suppliers in which they had a financial interest; (2) charges that some of the defendants as officers and directors had mismanaged Chrysler from 1956 to 1961, and (3) charges that the Incentive Compensation Plan of Chrysler and its Stock Option Plans were not soundly devised, and were unfair to Chrysler's stockholders.

Prior to the agreement of settlement the plaintiffs had conducted fairly extensive discovery proceedings, and agreed to the terms of the settlement only on the condition that they be permitted further discovery in order to determine whether or not the claims asserted in the complaints had sufficient merit to demonstrate the unfairness of the proposed settlement. Additional discovery was allowed which thereafter proved to be elaborate. The final

result was that plaintiffs concluded that, except for the cause of action based upon the unfairness of the Incentive Compensation Plan, no cause of action set forth in the complaints could be successfully prosecuted to recovery because of the lack of probative evidence.

Accordingly, plaintiffs represented to the stockholders i nthe notice calling a stockholders meeting to approve the proposed settlement that, with the exception of the cause of action based upon the Incentive Compensation Plan, there was no possibility of recovery in any substantial amount for the benefit of Chrysler and its stockholders.

Thereafter, the stockholders, at the special meeting called for the purpose, overwhelmingly approved the proposed settement and a modification of the Incentive Compensation Plan which was part of the proposed settlement.

In addition, following the stockholders meeting the Chancellor appointed an *amicus curiae* to report to him on the relevant issues to be tendered at the hearing on the proposed settlement, and as to proof which would be of assistance to him in passing on the fairness of the settlement. The *amicus* filed an elaborate report with the Chancellor analyzing the evidence of record and suggesting other areas in which additional proof might be desirable.

Subsequently, an extensive hearing upon the fairness of the proposed settlement was held before the Chancellor. He ultimately approved the settlement. From his judgment of approval these appeals are taken by various objecting stockholders who had appeared at the hearing before the Chancellor to oppose the settlement.

Fundamently, the settlement agreed upon by the parties and approved by the Chancellor provides that the actions herein be dismissed with prejudice and releases be delivered to the defendants, with the exception of the defend-

ant Newberg, and, in return, that the Chrysler Incentive Compensation Plan be amended by stockholder action to accomplish what both plaintiffs and defendants say is a better Incentive Compensation Plan than that formerly in effect.

These appeals were taken only by certain stockholder objectors appearing at the hearing upon the settlement. None of the plaintiffs have appealed but appear in this Court as appellees along with the defendants. Only one of the objectors, viz., Ezzes, attacks the approval of the settlement on the ground that some of the causes of action asserted in the complaints are not in fact worthless but, to the contrary, offer hope of substantial recovery for the benefit of Chrysler.

We first consider the arguments made by the appellant Ezzes that certain of the causes of action offer hope of substantial recovery for the benefit of Chrysler. In doing so, however, we consider only those specific causes of action brought to our attention by Ezzes in his brief and at the argument.

First, Ezzes argues that the incentive compensation computations for the years 1955, 1957, 1960 and 1962 were made in violation of the Incentive Compensation Stockholders' Resolution of 1956. The argument is that nonoperating income was improperly included in consolidated net earnings of Chrysler for those years in order to compute the total amount payable as incentive compensation.

For the years in question the payment of incentive compensation was governed by the Stockholders' Resolution of 1956 authorizing the payment of incentive compensation not to exceed 5% "of the consolidated net earnings for that fiscal year (as reported in the Annual Report to the stockholders)."

In the computations in question all income of Chrysler resulting from its automobile business as well as from its investments, interest on loans, and profits from other sources were included in consolidated net earnings for the purpose of computing incentive compensation. Ezzes argues that the phrase "consolidated net earnings" used in the Resolution of 1956 necessarily excluded earnings from any source not connected with its main business venture, i.e., the making and sale of automobiles. It is argued that the improper inclusion of the so-called nonoperating income for the years in question resulted in an increase in incentive compensation of slightly over $2,000,000 which may readily be recovered from the defendants.

The Resolution of the Stockholders of 1956 does not exclude in terms so-called nonoperating income, but refers generally to "consolidated net earnings." Chrysler is actually a diversified business and has earnings arising from other than the manufacture and sale of automobiles. It has earnings derived from its Air-Temp, Missile, Defense and Space Divisions which are non-automibile sources, and from some other diversified sources such as catering service, vending machines in its plants, etc.

If the stockholders intended to exclude income from sources other than the manufacture and sale of automobiles from the Incentive Compensation Plan, that should have been made specific in the Resolution authorizing such payments. This follows from the provision in the Resolution that incentive compensation was to be based on the Annual Report to stockholders, which included earnings from all sources as consolidated earnings.

Ezzes, however, cites in this connection three cases which he argues control the question.

He cites *Schwartz v. Miner*, 37 Del. Ch. 575, 146 A. 2d 801. This case was a derivative action on behalf of a corporation which had a Profit-Sharing Trust Plan providing for contribution by the corporation of a percentage of its consolidated net profits. The corporation made an investment in the stock of a supplying company which it later sold at a loss. In determining later the amount to be distributed under the Profit-Sharing Plan, the loss thus occasioned was not deducted from the net profits. The Chancellor held that the corporation under the Plan was not required to deduct the net loss from the sale of capital assets in determining the amount to be distributed.

The case, however, does not stand for the proposition for which Ezzes cites it. The Plan involved in the *Schwartz* case provided for a contribution by the corporation to the Profit-Sharing Trust of a percentage of "consolidated net profits * * * exclusive of capital gains or losses." We think the Chancellor approved the exclusion of the capital loss from the computation of consolidated net profits of the corporation by reason of the precise exclusion in the Plan, itself and not upon any theory that consolidated net earnings of necessity must be exclusive of so-called nonoperating income.

Ezzes also cites *Lieberman v. Becker*, 155 A. 2d 596. We think, however, this case has nothing to do with the problem. It dealt with an attack upon a Deferred Compensation Unit Plan ultimately upheld by this Court. That Plan, however, was tied directly to the market price and dividends, upon the corporation's stock. We see no connection between the rule announced in the *Lieberman* case and the cause of action now under consideration.

Finally, on this point Ezzes cites *Heller v. Boylan*, 29 N. Y. S. 2d 653, aff'd 263 App. Div. 815, 32 N. Y. S. 2d 131. This case, we think, is equally inapposite to the one before us. In it the Court construed the term "net profits" used in a bylaw providing for the payment of incentive bonus. The bylaw in question defined "net profits" as the "net earnings made by the company in its business as a manufacturer and seller of tobacco and its products." The Court in *Heller* clearly reached its decision upon the conclusion that if non-tobacco earnings of the company had been intended to be included, the bylaw would have been worded differently.

Thus, it is, we think, that with respect to this particular cause of action the contention of Ezzes that substantial recovery could be made on it is erroneous. To the contrary, we think no recovery could be obtained as a result of trial.

The next cause of action said by Ezzes to have the probability of ultimate substantial recovery is that in 1962 the sum of $884,000, made up of state and local taxes, was included in net earnings. It is argued that this was illegal because this item was not reported in the 1962 Annual Report to stockholders as required by the Resolution governing Incentive Compensation Plans.

The figure $884,000 is arrived at as the difference between $60,700,000 reported as "Taxes on Income" in the 1962 Annual Report to Stockholders, and $61,584,000 included as "Taxes on Income" in the computing of incentive compensation for 1962.

It is therefore argued that since only those amounts reported in the Annual Report to stockholders could be included in the computation of incentive compensation, and

since the $884,000 was not reported in the Annual Report, it was clearly improperly included in the incentive computation and the directors are accordingly liable.

Initially, it is to be observed that the sum of $884,000 included in the 1962 computation is in fact the total of state and local income taxes paid by Chrysler. Prior to 1942 these figures were included by Chrysler's accountants with Federal income taxes but, thereafter, were not so included because the amounts did not again become significant until 1962 after the decision in *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, upholding th rights of states to levy income taxes on companies engaged in interstate commerce.

Following this decision, Chrysler's auditors sought the advice of counsel as to whether or not to take such taxes into account in computing incentive compensation.– This action was taken in accordance with the 1956 Resolution which authorized the auditors in the computation of incentive compensation to rely upon the opinion of counsel as to any matter of law.

The question therefore as to the propriety of including $884,000 in the computation of incentive compensation for the year 1962 depends solely on whether or not these figures were contained in the Annual Report to stockholders for that year. As a matter of fact, the Annual Report to stockholders of 1962 does in fact contain the figures making up this sum, although they are included under different headings in the Annual Report. We are accordingly of the opinion that the Chancellor was correct in holding as he did that this asserted cause of action had no probability of substantial recovery.

Next, Ezzes argues that the cause of action based upon an alleged violation of the 1929 Incentive Compensation

Resolution of Stockholders for the years 1953 and 1955 has substantial probability of recovery.

The 1929 Resolution of Stockholders providing for incentive compensation, later superseded by the 1956 Resolution, provided that incentive compensation may be paid not in excess of 5% "of the net earnings of the corporation for that year." It is argued, citing *Heller v. Boylan, supra,* that the clear and unambiguous terms of this Resolution prevented the payment of incentive compensation for the years in question out of "consolidated earnings" of the corporation, but that this in fact was done in 1953 and 1955.

However, from 1929 on, the earnings of the corporation were always reported to stockholders as consolidated earnings. We think this continued practice clearly indicates that the intention of all concerned was that the 1929 Resolution referring to "net earnings" in fact meant "consolidated net earnings." Under the circumstances, it is proper to define the phrase "net earnings" as "consolidated net earnings." *Meyers v. Cowdin,* 47 N. Y. S. 2d 471, aff'd 270 App. Div. 827, 60 N. Y. S. 2d 129 aff'd 296 N. Y. 755, 70 N. E. 2d 555, and *Diamond v. Davis,* 62 N. Y. S. 2d 181.

We think this cause of action is at best of doubtful merit.

Ezzes next argues that the cause of action charging invalidity of stock options issued after 1956 in violation of the 1956 Incentive Compensation Resolution is meritorious and has promise of substantial recovery against the defendants on behalf of the corporation.

The argument in this respect is that since the Stockholders' Resolution of 1956 limited all Incentive Plans to 5% of consolidated net earnings, necessarily no stock options could have been issued if the full 5% had been paid out as incentive compensation. It is argued that the granting of stock options falls within the meaning of the words

"Incentive Plans" as used in the Stockholders' Resolution of 1956.

Without laboring the issue, however, we are of the opinion that the limitation of a percentage of consolidated net earnings under the Stockholders' Resolution of 1956 has no bearing on the issuance of stock options. This is made clear by a comparison of the Stockholders' Resolution of 1929 with that of 1956. The 1929 Resolution authorized the Board to establish Profit-Sharing Plans and to provide for Bonus Plans. In 1956 the 1929 Resolution was amended to permit the Board to provide plans for officers and executives of the corporation "to share in the profits of the corporation (hereinafter in this Resolution called Incentive Plans)." It seems plain therefore that the 1956 Resolution substituted the phrase "Incentive Plans" for the former phrases of "Profit-Sharing Plans" and "Bonus Plans." This being so, it is apparent that the amendment was not intended to include Stock Option Plans which, ordinarily at least, are not Profit-Sharing or Bonus Plans but are plans designed to permit the optionees an opportunity to acquire a share in the corporation, itself.

Furtheremore, the Stock Option Plan of the corporation was approved by the stockholders in 1952 and had at that time no relation to the Incentive Plan of 1929, nor did it acquire any by the subsequent amendment of that Plan in 1956.

Accordingly, we are of the opinion that this cause of action is without merit.

Next, Ezzes argues that the cause of action charging the directors with the wasting of corporate assets by causing the stockholders to cancel stock options previously granted and granting new options at a lower option price is meritorious and has the probability of substantial recovery.

In 1958 the Stock Option Committee of non-eligible directors granted, subject to stockholder approval, new options to purchase stock at around $50 per share on condition the holders of options previously issued at $61 to $77 per share were surrendered for cancellation. The Board recommended the proposal to the stockholders. It is argued that this aciton constitutes a waste of corporate assets.

It appears to us that the provisions of the Plan authorizing the issuance of options in 1959 comply with the requirements laid down by Delaware Law for the validity of Stock Option Plans. Indeed, no serious contention is made to the contrary.

The argument of Ezzes under this heading seems to be that a corporation should not permit the cancelation of old options and the issuance of new stock options at lower prices since that, in effect, excuses poor performance by management. Certain magazine and Law Review articles are cited to this effect and, indeed, we may assume that, as an ordinary business practice, such action is undesirable. This does not alter the fact, however, that under the law of this State a Stock Option Plan may not be successfully attacked when the options are granted by a disinterested committee with the approval of the directors and stockholders, and where the optionee is required to remain in the employ of the corporation. *Gottlieb v. Heyden Chemical Corp.*, 33 Del. Ch. 177, 91 A. 2d 57; *Beard v. Elster*, 160 A. 2d 731. The new Option Plan meets these tests.

We are of the opinion that this cause of action has no merit.

Finally, Ezzes argues that the cause of action based upon the cost to Chrysler of a revolving credit commit-

ment is meritorious and has probable recovery of in excess of $2,000,000.

The facts underlying this alleged cause of action are that in 1958 Chrysler obtained a revolving credit commitment for $150,000,000 which was continued until 1961. Chrysler never used the revolving credit but its existence cost Chrysler $2,157,533 from 1959 to 1961.

The credit commitment was recommended by the Finance Committee in 1958 of which there were nine members, seven of whom were directors of banks later participating in the credit commitment. Prior to this action Chrysler's Administrative Committee, the members of which were all full-time employees of Chrysler, approved the establishment of the credit commitment. On the same day, the Board of Directors—18 of the total of 21 being present—approved the credit commitment arrangement. Of the 18 directors voting, eight were officers or directors of banks later participating in the revolving credit commitment.

Ezzes argues that the action of the Finance Committee and the Board of Directors was illegal as a violation of Article II, Section 6 of Chrysler's bylaws requiring a majority of directors in office to constitute a quorum, and Article II, Section 9 providing that no director shall vote upon a matter in which he is interested.

It appears that the reasons leading to the arrangement of the revolving credit commitment are that in 1953 it was clear to the directors that Chrysler fased heavy cash demands due to the requirements to be caused by major model changes in 1959 and 1961; the entry into the compact car field; increased emphasis on international operations and a slowdown in Government payments for defense products, all of which would probably require addi-

tional cash. In addition, in 1958 it had become obvious that Chrysler's financial fortunes had begun to deteriorate and that its sales were severly contracting.

Accordingly, on the basis of this estimate of Chrysler's prospects the revolving credit arrangement was approved. The agreement was between Chrysler and the Hanover Bank as agent, of which McNeill, one of Chrysler's directors, was president. However, it appears that the Hanover Bank had been selected by two independent officers of Chrysler as agent, and that it had agreed to serve without compensation.

Furthermore, at the time the revolving credit agreement was authorized, no bank other than the Hanover Bank had been selected as a participant in the agreement. As a matter of fact, Simons, Chrysler's treasurer, selected the banks to participate, allocated their shares of the participation, and later reported that fact to the directors.

Thereafter, from 1958 to 1961 the advisability of terminating the credit agreement was reviewed frequently and, in the unanimous opinion of the Board of Directors until 1961, it was continued as advisable for the good interests of Chrysler.

The Chancellor found that the evidence of record discharged the burden of proof lodged upon the directors of proving that the commitment was reasonably necessary as a matter of business judgment for the purpose it was tended to serve, and that, accordingly, the technical by-law violation, if indeed there was one, imposed no liability upon the directors since there was no showing at all of any loss to Chrysler or of any pecuniary benefit to the allegedly interested directors.

We agree with the Chancellor that this cause of action is essentially an attack upon a decision involving the exercise of business judgment on the part of the directors. In the absence of a showing of bad faith or fraud, of which there is none in this record, recovery on this claim is at best of extremely doubtful probability. *Keenan v. Eshleman*, 23 Del. Ch. 234, 2 A. 2d 904; *Gottlieb v. Heyden Chemical Corp.*, 33 Del. Ch. 82, 90 A. 2d 660; *Stering v. Mayflower Hotel Corp.*, 33 Del. Ch. 293, 93 A. 2d 107.

There were other causes of action argued by Ezzes to the Chancellor below, all of which were held by the Chancellor to be of extremely doubtful merit. Ezzes has not in this Court renewed his argument with respect to these other causes of action. We therefore are not required to consider them.

With respect to the causes of action urged upon us as containing probability of substantial recovery and, thus, a reason for disapproval of the settlement, we agree with the appraisal of them made by the Chancellor to the effect that the evidence produced in the record in support of these claims is wholly inadequate to afford any hope of substantial recovery upon them. Therefore, they may properly be described as devoid of merit or, possibly as some of the parties label them, worthless.

Of all of the claims asserted against these defendants, the only one considered to have any possibility of ultimate recovery was the one based upon the alleged unfairness of the 1956 Incentive Compensation Arrangement. All of the parties before us agree that this is the fact with the exception of the appellant Ezzes and the plaintiff-appellee Dann, whose position will be referred to later.

Under the 1956 Plan, incentive compensation awards were permitted to be made for years when the consoli-

dated net earnings of Chrysler and its subsidiaries, computed before the payment of taxes on income and before the payment of incentive compensation and interest as long term debt of the corporation, surplus and retained earnings of Chrysler and its subsidiaries and the long-term debt of Chrysler. The total award for any one year was limited to 5% of such excess. There was no provision limiting the fund to be paid as incentive compensation in any one year to the amount of dividends declared in that year.

The charge of unfairness with respect to the 1956 Plan is that it was wasteful in that it permitted the payment of more in the way of incentive compensation than do comparable Plans of Chrysler's competitors; that the Plan does not limit the payment of incentive compensation only to years when corporate income exceeds a reasonable return on the stockholder's investment; and that the Plan requires a so-called "set-aside" for the benefit of stockholders of only 7% of the stockholders' investment before taxes which after the payments of taxes, is the equivalent of about 3½%. All of this means, it is argued, that the Plan is unfair because the stockholder's return on his investment is too small in comparison with the incentive compensation permitted to be paid.

The Chancellor concluded that the attack on the Plan as outlined above raised an issue of fairness upon comparison of the return on the stockholder's investment with the amount of incentive compensation that could be paid. He therefore concluded that an issue as to the fairness of the 1956 Plan remained in the case, even though his appraisal of the other causes of action in effect was that they were worthless.

Accordingly, the parties agreed upon a settlement as to the only remaining issue, that of fairness of the Plan. As a part of that settlement they proposed the adoption of a new Incentive Compensation Plan to be submitted to the stockholders for their approval upon the understanding that a vote for its approval was a vote in favor of the agreed-upon settlement. As we have pointed out, the stockholders overwhelmingly approved both the new Compensation Plan and the settlement.

The new Plan of 1963 briefly is as follows: The period within which it is to operate is 1963 through 1969. It provides that incentive compensation may be paid only when the consolidated net income after taxes, as reported in the Annual Report to stockholders, plus provision for incentive compensation plus interest on the long-term debt of the corporation, is greater than 5½% of the stockholder's investment—that is, capital, surplus and retained earnings plus the corporation's long-term debt. The total amount that may be awarded as incentive compensation is limited to the lower of 12% of the excess or the aggregate amount of all dividends paid upon the common stock for the year in question.

The adoption of the new Plan resulted in changing the Incentive Compensation Plan of Chrysler from a before-tax to an after-tax basis. It increased the after-tax set-aside from 3½% under the old Plan to 5½% under the new Plan, thus increasing the benefit to the stockholder's investment. The new Plan increases the percentage rate of incentive compensation computed after the increased set-aside for the benefit of stockholders. The result is that the Plan requires higher earnings before any award of incentive compensation may be made.

Until the earnings for a particular year reach the so-called "cross-over" point—that is, the amount of earn-

ings which would make the fund for incentive compensation the same under both the old and new Plans—the result would be a smaller amount available under the new Plan to be awarded as incentive compensation. After the cross-over point is reached, however, a larger amount would be available for such purposes under the new Plan than would have been under the old. In addition, an increase in earnings in each succeeding year increases the amount of the set-aside so that higher earnings are required in each succeeding year to continue an increase in the amount awarded as incentive compensation.

It is obvious that the settlement with respect to the Compensation Plan has resulted in the increase of the set-aside for the benefit of stockholders before the payment of incentive compensation. This automtically increases the total amount of earnings required before incentive compensation can be paid.

The defendants argue it is really immaterial whether the change in the Compensation Plan is a benefit to Chrysler Corporation. They argue that the settlement should be approved for the reason that the necessity of defending the worthless claims asserted against the defendants would prove an expensive and unreasonable burden upon Chrysler Corporation by reason of the cost of the defense and the wastage of time which would be required of Chrysler's officers and executives. Indeed, this seems to us to be an apparent fact.

The Chancellor concluded that his function was to determine whether or not the terms of the settlement are fair to Chrysler Corporation when set against the probability of recovery on the asserted claims against the other defendants. These are, of course, theoretically asserted for the benefit of Chrysler Corporation.

He concluded that while both the old Plan and the new Plan were probably fair and would be upheld against attack, he could not and should not determine which of the two was the better from the point of view of Chrysler. He pointed out that the new Plan does in fact require higher earnings, up to a certain point at least, in order for the same amount to be paid as incentive compensation as would have been permitted under the old Plan. Recognizing that no one could predict the future of Chrysler accurately, he reached the conclusion that in the long run the new Plan would probably result in increased benefits to the stockholders of Chrysler.

Accordingly, under all the circumstances, he approved the settlement subject to the limitation that no director of Chrysler should receive benefits under the Plan for the year 1963. This limitation was imposed because of the greatly increased earnings of Chrysler for the year 1963 which probably were known or could have been forecast by the Chrysler directors entitled to benefit under the Plan.

It is this determination of the Chancellor we are to review in these appeals. Our function in the review of such matters is not to determine for ourselves the intrinsic fairness of the settlement in the light of our business judgment. Our function is solely to determine whether or not the Chancellor in the approval of the settlement has abused his business judgment to an extent amounting to an abuse of judicial discretion. *Rome v. Archer*, 197 A. 2d 49; *Kleinman v. Saminsky*, 200 A. 2d 572.

Initially it is obvious that the settlement approved in this litigation does not take the traditional form of the payment of a *quid pro quo* by the defendants. The reason for this is obvious. Such a payment would be nothing

more than a buying-off of the plaintiffs for the dismissal of worthless claims. It is, we think, generally conceded that such a practice is an undesirable one to ask a court to approve. In fact, Rule 23(c) of the Court of Chancery under which this settlement was approved was, we think, specifically designed to end a practice prevalent theretofore to this effect. See 3 *Moore's Federal Practice* (2d Ed.), ¶23.24[2].

Nevertheless, on the record before us the Chancellor concluded, and we agree with his conclusion, that the causes of action, with one possible exception, were, if not worthless, at least incapable of sufficient proof to hold out much hope of recovery. With respect to the one cause of action about which there could be some argument, the parties have agreed upon, and the Chrysler stockholders have approved, an adjustment which probably will result in a long-term benefit to Chrysler.

Accordingly, we think it was proper for the Chancellor to conclude, in view of the desirability of terminating litigation which, at best, was an harassment of Chrysler, to approve a settlement which departs from the traditional form. Each case, of necessity, must be decided upon its peculiar facts. Under the peculiar facts of this case this settlement is fair and results in the ending of this prolonged and harassing litigation. We think it should be approved.

The appellant Koenigsberg, an objector, argues that the settlement should be disapproved because in effect the stockholders, themselves, are making the payment of settlement through the media of increased incentive compensation payments. We think the argument confuses the facts of the result. Certainly, it is to the benefit of Chrysler stockholders to end this litigation. There is no hope of substantial recovery for their benefit by the continuance

of the litigation, but there is assurance of cost to them in the event it is prolonged. Furthermore, it is at least arguable that the new Incentive Compensation Plan in the long run will benefit the stockholders of Chrysler by reason of the increased requirements of the so-called set-aside.

It seems to us to make little difference under the circumstances of this litigation that the individual defendants who receive releases as a part of this settlement have in fact made no monetary payment in settement. This, we think, necessarily follows from the fact that the claims asserted against the individual defendants have been found to be devoid of merit. Despite this, they cannot end the litigation. The claims are pleaded with technically legal sufficiency and, thus, are not subject to a motion to dismiss.

Nevertheless, if the claims are prosecuted the expense of defense will fall upon Chrysler Corporation which, in the last analysis, is the Chrysler stockholders. We think, therefore, that while on its face plausible, the argument of Koenigsberg is not sufficient cause to us to interfere with the exercise of the discretion of the Chancellor.

The appellants, Sandler objectors, argue that the settlement should be disapproved because it confers no benefit upon Chrysler and because, for the year 1962, the amount which may be awarded as incentive compensation under the new Plan is some $1,500,000 in excess of that which could have been awarded under the old Plan. The argument is, of course, primarily based upon the fortuitous circumstance that Chrysler's earnings for 1963 were greatly larger than for 1962. While the directors and officers of Chrysler may have realized the potentially greater earnings for that year, that fact has been taken care of by the Chancellor in the condition he imposed upon his approval of the settlement, that such persons not share in the incentive compensation award for 1963.

A further answer to these objectors' argument is that, in all probability, over the long span of the future, the Plan in its operation will resultt in benefit to Chrysler's stockholders. Admittedly, no one can predict Chrysler's future earnings but, certainly, in a business such as the authomobile industry, profits take their ups and downs and may well equalize themselves over a course of years.

The objector Ezzes makes a final point to the effect that approval of the 1963 Incentive Compensation Plan by the directors and stockholders was invalidly obtained.

He pointsout that of the directors present at the meetings of February 7, 1963 and March 21, 1963, which resulted in the recommendation of the Plan to the stockholders, all but two on February 7, and all but four on March 21, were either recipients of incentive compensation or defendants in these actions, or both. Upon this fact, it is argued that the Board's action in approving the settlement, including the amendment to the Plan, was invalid as a violation of Article II, Section 6 of Chrysler's bylaws requiring a majority of directors in office to constitute a quorum, and as a violation of Article II, Section 9 of the bylaws providing that no director shall vote upon a matter in which he is interested, or be present when the vote is taken.

Ezzes overlcoks the fact that the action of the directors did not bind Chrysler to the amendment in the Compensation Plan since, under the then-existing Plan, the sole method of change was by stockholder action. The most the directors could do in this respect was to submit to the stockholders the proposed change. This is what was done. Whether or not, therefore, there was some legal defect in the directors' action, that defect could be cured by informal stockholder action. *Kerbs v. California Eastern Airlines,* 33 Del. Ch. 69, 90 A. 2d 652.

Ezzes says, however, that there was no effective stockholder action because a fair disclosure of the facts was not made to the stockholders in that they were not informed of the future profit potentials of Chrysler and the resulting possibility of payment of greatly increased incentive compensation under the amended Plan. He charges that before April 16, 1963, the date of the stockholders' meeting, the directors knew that the new Plan would produce a substantially greater fund for incentive compensation for 1963 than would the old Plan; that there had been general public acceptance of Chrysler's 1963 model; that sales and earnings figures pointed to an outstanding year for Chrysler, and that general conditions known to the automobile industry indicated that the industry would have an outstanding year in 1963. The failure to include this information in the proxy material and the notice of settlement hearing, it is asserted, constituted a breach by the directors of their duty to make a full and frank disclosure to stockholders.

It appears, however, that these matters were largely disclosed to the stockholders in the Annual Report for 1962 which was sent to them at or prior to the starting of solicitation of proxies. Indeed, it would seem as though a large part of the information Ezzes says was withheld was a matter of general public knowledge.

In any event, we are satisfied that the stockholders were fully informed and acted in the light of that information except, possibly, with respect to the charge that the directors knew that the new Plan would produce substantially greater compensation for 1963 than would the old Plan. The Chancellor, however, imposed as a condition upon his approval of the settlement the requirement that no director-defendant shall receive greater benefits under the Plan in 1963. We think this condition adequately takes care of Ezzes' objection.

All of the plaintiffs, with the exception of the plaintiff Dann, named as appellees in these proceedings, argue for the approval of the settlement. They advance two reasons in support of their position, one of which we have followed for our approval of the settlement. Their second reason is that the main benefit of the litigation now settled was to effect a change in management in Chrysler Corporation which has resulted in its greatly improved financial position.

We are of the opinion that the second reason, if it is entitled to any consideration—a question upon which we refuse to express an opinion—is entitled to consideration only in connection with the application for fees, as to which the Chancellor has reserved decision.

Finally, the plaintiff Dann, an appellee before us, has filed a brief and was permitted to argue orally in opposition to the approval of the settlement.

Some of the other appellees filed a motion to strike the brief of Dann on the ground that he had no standing before us to argue in opposition to the Chancellor's judgment since he had not taken an appeal therefrom. We think the position taken by these appellees is correct and that the plaintiff Dann, appellee here, has no standing to argue in opposition to the judgment below. Cf. *Cleaver v. Roberts*, 203 A. 2d 63; *Trans World Airlines, Inc. v. State ex rel. Porterie*, 183 A. 2d 174; *Casey v. Southern Corp.*, 26 Del. Ch. 447, 29 A. 2d 174. The brief of the appellee, Sol A. Dann, is accordingly ordered struck from the record.

By reason of all of the foregoing, the judgment of the Chancellor approving the settlement of this litigation is hereby affirmed.

EXHIBIT M

ORDER OF THE SUPREME COURT OF DELAWARE DENYING REARGUMENT

And now, to-wit, this 4th day of December, A. D. 1964, it is

ORDERED:

1. The petions for reargument of plaintiff Sol. A. Dann and the plaintiffs below in Civil Action No. 1330 except Sol A. Dann, and the petition of the appellant Koenigsberg, are hereby denied:

2. The costs outlined in the certificates of the defendants below and the plaintiffs below except Sol A. Dann for printing the appendices pursuant to Rule 25(3), are hereby taxed against the appellee Chrysler Corporation.

/s/ Daniel F. Wolcott J.
/s/ James B. Carey J.
/s/ Albert J. Stiftel J.

EXHIBIT N

In the Supreme Court of the State of Delaware

HASTINGS PETITION FOR REARGUMENT

Come now Plaintiffs Below in Civil Action No. 1330 Appellees, except Sol A. Dann, and respectfully petition the Court for reargument of the Opinion of the Court dated November 17, 1964, upon the following grounds:

1. The Supreme Court Opinion stated (pages 2-3) as follows:

> "Prior to the agreement of settlement the plaintiffs had conducted fairly extensive discovery proceedings, and agreed to the terms of the settlement only on the condition that they be permitted further discovery in order to determine whether or not the claims asserted in the complaints had sufficient merit to demonstrate the unfairness of the proposed settlement. Additional discovery was allowed which thereafter proved to be elaborate. The final result was that plaintiffs concluded that, except for the cause of action based upon the unfairness of the Incentive Compensation Plan, no cause of action set forth in the complaints could be successfully prosecuted to recovery because of the lack of probative evidence."

The fact is that while plaintiffs had conducted some investigation on their own, they had been prevented by Court

Order from taking discovery prior to the commencement of settlement negotiations. Limited discovery was agreed to by defendants in connection with the contemplated settlement. Any statements concerning evidence were confined to the state of the record established by the limited discovery and did not undertake to state what might develop in the event that the causes of action should proceed to trial.

2. The Supreme Court stated (page 3) as follows:

> "Accordingly, plaintiffs represented to the stockholders in the notice calling a stockholders' meeting to approve the proposed settlement that, with the exception of the cause of action based upon the Incentive Compensation Plan, there was no possibility of recovery in any substantial amount for the benefit of Chrysler and its stockholders."

The notice which was sent to the stockholders by Chrysler Corporation pursuant to this Order of the Chancellor set forth *the state of the admissible evidence which had been developed up to that point, and did not consider the probability of developing other evidence in the event that litigation should be pursued. The plaintiffs below did not and have not admitted or agreed that the claims were "worthless". Moreover, plaintiffs have always taken the position that in view of the change in management at Chrysler, it was in the best interest of the Company to settle the litigation rather than prosecute the claims through involved and costly litigation which would distract Chrysler personnel from corporate activities.*

3. The Supreme Court opinion stated (page 17) as follows:

> "He [The Chancellor] therefore concluded that an issue as to the fairness of the 1956 Plan remained in

the case, even though his appraisal of the other causes of action in effect was that they were worthless."

The Chancellor, in evaluating the proposed settlement, concluded "that the probability of success in litigating any such claims is so remote as to entitle them to practically no consideration". Moreover, the Chancellor, in his Opinion dated March 4, 1964 stated "In discharging its function of evaluating the value of the settlement, the court would not directly determine the merits of the litigation." The Chancellor did not hear the matter on its merits and did not state that the claims were "worthless".

4. The Supreme Court opinion stated (page 21) as follows:

> "Initially it is obvious that the settlement approved in this litigation does not take the traditional form of the payment of a *quid pro quo* by the defendants. The reason for this is obvious. Such a payment would be nothing more than a buying-off of the plaintiffs the dismissal of worthless claims. It is, we think, generally conceded that such a practice is an undesirable one to ask a court to approve. In fact, Rule 23(c) of the Court of Chancery under which this settlement was approved was, we think, specifically designed to end a practice prevalent theretofore to this effect. See *3 Moore's Federal Practice* (2d Ed.), §23.24(2)."

The above quoted language presupposes (1) that the claim was in fact worthless and no dispute could even exist as to the lack of merit of the claims which would warrant compromise of the claims; and (2), that any payment by defendants would go to the plaintiffs. Since this

is a derivative action, the payment would be made to the corporation. The protective feature of Rule 23(c) is to assure that the corporate claims would not be lost by inadequate consideration or by a deal with the plaintiff.

In this case the settlement is not attacked on the ground that the considertaion for the release of the corporate claims is too small or that the plaintiffs will receive some special benefit at the expense of the rights of the corporation.

5. The Supreme Court Opinion stated (at page 21) as follows:

> "Nevertheless, on the record before us the Chancellor concluded, and we agree with his conclusion, that the causes of action, with one possible exception, were, if not worthless, at least incapable of sufficient proof to hold out much hope of recovery."

The Chancellor stated "Common sense, it seems to me, would dictate that where the hope of recovery on the part of the plaintiffs and thus on the part of the corporation, is small, little can be demanded from the defendants by way of settlement. Certainly this is the case here." In his Opinion dated March 4, 1964, the Chancellor stated "in discharging its function of evaluating the fairness of the settlement, the court did not directly determine the merits of the litigation."

Wherefore, based upon the grounds hereinbefore set forth, plaintiffs below in Civil Action No. 1330, Appellees, except Sol A. Dann, respectfully pray that this Court grant reargument upon the Opinion of this Court dated November

17, 1964, or in the alternative, that this Court modify said Opinion consistent with the foregoing grounds. (Emphasis supplied.)

Danial O. Hastings,
Hastings, Taylor & Willard,
Attorneys for Plaintiffs Below in Civil Action No. 1330, Appellees, except Sol A. Dann.

Dann, Rosenbaum, Bloom & Kaufman,
Except Sol A. Dann,
1820 David Stott Building,
Detroit 26. Michigan.

I hereby certify that the above petition for reargument is presented in good faith and not for delay.

Daniel O. Hastings,
Hastings, Taylor & Willard,
Continental American Building,
Wilmington, Delaware.

EXHIBIT O

In the Supreme Court of the State of Delaware

(DANN) PETITION FOR RE-ARGUMENT

Now comes plaintiff, Sol A. Dann, in pro per, and respectfully petitions this Honorable Court for a re-argument of the Opinion of this Court and all matters involved herein upon the following grounds:

1) The Opinion of this Court is contrary to the best interests of the stockholders.

2) The Opinion contains statements and characterizations concerning the merits of these causes of action that are unwarranted, contrary to the record, and contrary to the findings and Opinion of the Chancellor.

3) That before this suit was instituted, Chrysler Corporation was riddled with corruption. That in referring to these cases as "worthless", "without merit", and "no possibility of recovery", etc., the Court ignored the fact that the files and records in this case indicate that the actions commenced by this plaintiff were responsible for:

(a) Former President Newberg agreed to pay back $450,000 because of his wrongdoing and his options on stock worth several million dollars were likewise cancelled; and his partner, Mr. Stone, paid back $175,000.

(b) Former Chairman Colbert was removed, his salary reduced from $250,000 to $50,000 and his option on 35,000 shares of stock worth several million dollars was also cancelled;

(c) Over five vice-presidents were removed because of corruption, conflicts of interest or other acts of wrong-doing and their valuable options on stock worth in the aggregate untold millions, were likewise cancelled.

(d) Many superintendents, purchasing agents, managers of plants and other officials were also fired because of conflicts of interest, corruption and wrongdoing.

(e) Over 7,000 unnecessary white-collared employees were fired.

(f) An Ethics Committee was appointed and a code of ethics was adopted to remove, and to prevent the continuance of these acts of corruption.

(g) The Board of Directors itself was re-organized in order to make the number of outside directors greater than those on the inside.

(h) The entire policy of the corporation was changed and Chrysler notified the stockholders and public that the *new management* had changed from its former ways and were doing a job and intended to continue doing a job to "fix what's wrong, keep what's right and move ahead."

(i) The change in policy and change in management that reduced its unnecessary costs of operation, enabled Chrysler to enjoy the benefit of increased earnings in over one hundred million dollars per year. The benefit to its stockholders has been four-fold.

4) The Opinion of this Court ignores many areas of corruption on the part of many individual defendants who violated their fiduciary obligations to the corporation and its stockholders and liability of those defendant directors who permitted acts of corruption to continue. They were liable in damages in untold millions to the corporation for malfeasance and misfeasance and for violating their fiduciary duties and obligations as directors, regardless of whether or not they personally had their "hands in the till" or personally had "conflicts of interest".

5) That the foregoing is briefly described or referred to in the record before this Court, but extensive and thorough depositions were *not* taken of all the wrongdoing defendants nor of those witnesses who could have testified to the merits of plaintiff's causes of action.

6) That the Opinion is contrary to the evidence of record in this entire file and case and contrary to the information, leads to evidence and potential evidence that could have been converted into evidence to support the causes of action involved herein.

7) The merits of plaintiff's complaints were not fully inquired into and were not determined or adjudicated by the Court below, except in a superficial manner.

The type of "evidence" and depth of inquiry to support a "settlement" is far different from a judicial determination and trial "on the merits".

8) The purpose of these "settlement arrangements" and their implementation were, at the request of Chrysler, designed to *nolle prosequi* and not pursue this litigation despite the merits of plaintiff's causes for action, in order to help Chrysler restore its image, as described in this plaintiff's affidavit in support of counsel's petition for fees reference to which is hereby made for greater certainty.

9) That it was wrong and not in keeping with nor in the interests of "good" business judgment to dismiss meritorious causes of action against wrongdoing defendants without adequate contribution or consideration from them personally, except for the unusual circumstances and needs of the *new management* in this particular case.

10) On March 4, 1964, Chancellor Seitz filed his supplemental "unreported" Opinion, as ITEM 298 of CALENDAR ENTRIES before this Court in an attempt to prevent the present misunderstanding and in which he said:

"* * * IN DISCHARGING ITS FUNCTION OF EVALUATING THE FAIRNESS OF THE SETTLEMENT, *THE COURT DID NOT DIRECTLY DETERMINE THE MERITS OF THE LITIGA-*

TION. IT MERELY WEIGHED THE CLAIMS AND POSSIBLE DEFENSES IN ORDER TO ARRIVE AT A DETERMINATION AS TO WHETHER THE SETTLEMENT WAS FAIR. * * *"

"* * * TO REMOVE ANY DOUBT THAT THE COURT WAS MERELY APPROVING THE SETTLEMENT RATHER THAN DIRECTLY DECIDING THE MERITS OF THE LAWSUIT, *I WILL STRIKE FROM MR. CORROON'S PROPOSED INTERLOCUTORY AND FINAL ORDERS WHEREVER THEY APPEAR THE WORDS 'ON THE MERITS'* * * *" Pages 3 and 4 of OPINION (Emphasis is ours.)

11) *Despite this Opinion,* defendants stressed before this Court that which was stricken by the Chancellor, and from which *defendants did not appeal.* They seem to be of the opinion that Chancellor Seitz erred in this respect and that there is apparently a need to have a *judicial* finding that there was "no merit" to plaintiff's complaints against them before the Court would have the right to dismiss the litigation against them. It is now not clear, whether in affirming the opinion of the Chancellor, his "unreported" Opinion was affirmed.

12) That the widely scattered and uninformed and *misinformed* stockholders had no practical or reasonable opportunity to vote with full and "clear" knowledge and information of those facts necessary for them to have before voting intelligently.

13) That the files and records in this case contain a letter dated April 3, 1963 signed by counsel for plaintiff stockholders addressed to Richard F. Carroon with copies sent to the Chancellor and counsel for defendants. The letter which is attached hereto reads as follows:

"We do not agree with all the statements in your letter and *particularly with the statement that the Notice to Stockholders* is the plaintiffs' notice. It is our understanding that, in the last analysis, the notice is the Court's notice. In fact, at the time the notice was presented to the Court *we objected to certain changes proposed by you* and *the Order was signed without our agreement to the changes.* We also proposed certain changes in the Order at that time and they were denied. Also, at that meeting with the Court, we believe *it was the understanding of all present that plaintiffs' position would be stated in their petition.*

"The Notice was sent to the stockholders on order of the Court. It is signed by the secretary of Chrysler. Factually, the notice was proposed by counsel for the individual defendants and worked out in many sessions in their office. The notice finally submitted to the Court represents some *compromises* on both sides. *The position of plaintiffs is set forth in the petition and affidavits which were filed on April 1, 1963.*" (Emphasis supplied.)

14) That the word "evidence" was designed and used in the stockholders' notice to deceive and mislead the stockholders and convey an impression that was contrary to its commonly accepted and true meaning.

15) That the actions of the *amicus*, "objectors" and "intervenors" referred to in the Opinion, who never examined and investigated the potential evidence, were not designed to and did not set forth the wrongdoings on the part of the defendants according to the evidence introduced and those wrongdoings that could have been established by developing the potential evidence.

16) That the stockholders did not have adequate, appropriate and proper protection and representation of their rights and interests and the issues involved were not properly and adequately presented to the Court.

17) These causes of action were not "settled" on the basis of the merits of plaintiff's complaints.

18) That false and improper representations, undue influence and other improper pressures and methods were used to accomplish the dismissal of these cases and achieve the results of these settlement arrangements, that chiefly benefit wrongdoing defendants.

19) That various pressures, threats and insults were made to intimidate this plaintiff. Their constant desire from the outset to settle this litigation by way of dismissals, their negativism and failure to investigate information, their failure and refusal to proceed with proper depositions to a trial in these matters frustrated this plaintiff and his efforts, and caused this plaintiff to become subject to the will and undue influence and domination of his counsel, and counsel for defendants.

20) That the striking of this plaintiff's briefs was improper and contrary to his constitutional rights.

21) That the Opinion goes beyond the purposes sought to be accomplished by this so-called settlement arrangement; it goes beyond the understanding and agreement of the parties; it is contrary to the best interests of the corporation and its stockholders, and goes beyond the *unreported* Opinion of Chancellor Seitz.

22) That a re-argument and re-hearing is necessary to prevent a miscarriage of justice.

Based upon the grounds hereinbefore set forth and those set forth in this paintiff's Appendix, Briefs, and previous representations to this Court, this plaintiff, Sol A. Dann, respectfully prays that this Court grant a re-argument of all the matters involved herein and the Opinion of this Court dated November 17, 1964 or, in the alternative, that this Court modify said Opinion consistent with the foregoing grounds and his previous representations and requests.

Sol A. Dann,
Plaintiff, In Pro Per.

Dated: November 25, 1964.

I, the undersigned, Sol A. Dann, do hereby certify that the foregoing petition is presented in good faith and not for delay.

Sol A. Dann,
Plaintiff, In Pro Per.

Subscribed and sworn to before me this 25th day of November, 1964.

Wm. Appel,
Notary Public, Wayne County, Michigan.
My commission expires Dec. 18, 1967.

EXHIBIT ATTACHED TO DANN PETITION AS PART OF EXHIBIT O

April 3, 1963

Richard F. Corroon, Esquire
350 Delaware Trust Building
Wilmington, Delaware

Re: Dann, et al. vs. Chrysler, et al.
Del. Chancery 1330

Dear Mr. Corroon:

We refer to your letter dated March 27, 1963, in reply to the letter of Mr. Dann to Mr. Love dated March 20, 1963. We believe that your letter would not call for a reply from us except for the fact that copies of it were sent to this office and to Messrs. Dabney and Robinson.

We do not agree with all the statements in your letter and particularly with the statement that the Notice to Stockholders is the plaintiffs notice. It is our understanding that, in the last analysis, the notice is the Court's notice. In fact, at the time the notice was presented to the Court we objected to certain changes proposed by you and the Order was signed without our agreement to the changes. We also proposed certain changes in the Order at that time and they were denied. Also, at that meeting with the Court, we believe it was the understanding of all present that plaintiff's position would be stated in their positon.

The Notice was sent to the stockholders on order of the Court. It is signed by the secretary of Chrysler. Factually, the notice was proposed by counsel for the individual defendants and worked out in many sessions in their

office. The notice finally submitted to the Court represents some compromises on both sides. The position of plaintiffs is set forth in the petition and affidavits which were filed on April 1, 1963.

Very truly yours,

/s/ David O. Hastings
Hastings, Taylor & Willard

/s/ Lewis M. Dabney, Jr.
Lewis M. Dabney, Jr.

/s/ Herbert Robinson
Liebman, Eulau & Robinson
Attorneys for Plaintiffs

DOH/ak

cc: Honorable Collins J. Seitz
Aaron Finger, Esq.
S. Samuel Arsht, Esq